

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MOHAMED JOHN AKHTAR and LA BUCA
RESTAURANT, INC. d/b/a SWING 46 JAZZ
AND SUPPER CLUB,

Plaintiff

-against-

ERIC ADAMS, Mayor of the City of New
York, ROHIT T. AGGARWALA, New York
City Department of Environmental Protection,
ERIC I. EISENBERG and JOHN AND JANE
DOES ONE THROUGH THIRTY,

Defendants

23-CV-6585 (JGLC)(VF)

ERIC EISENBERG'S OBJECTIONS TO REPORT AND RECOMMENDATION (D.I. 72)

The undersigned submits these objections to Magistrate Judge Figueredo's Report and Recommendation (D.I. 72), solely to the extent that it recommends that certain of Plaintiffs' claims only be dismissed **without prejudice** and that Plaintiffs be afforded an opportunity to replead them via an amended pleading. The undersigned submits that all of the claims should have instead been dismissed **with prejudice and without leave to replead**.

The Report and Recommendation appears to have overlooked, and did not address, the undersigned's arguments detailing why amendment should not be allowed in view of the extensive misconduct, deception, failure to abide by this Court's procedures, and/or intimidation during the course of this litigation by Plaintiff Akhtar (the owner of Plaintiff Swing 46) and/or Plaintiffs' counsel. D.I. 68 at 1, 3, 6, and 9-10; D.I. 69, ¶¶ 2, 7 and 16 and Exhs. 1 and 7 thereto.

The undersigned respectfully requests earnest consideration by this Court as to the above-cited arguments and materials, and their import on whether, considering the equities, Plaintiffs' waiver by choosing not to amend in accordance with Judge Clarke's Individual Rule of Civil Practice 4(e), and the need to maintain the orderly operations of this Court, the dismissal should instead have been fully with prejudice and without leave to amend.

Dated: June 20, 2024

Respectfully submitted,

s/ Eric Eisenberg
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